

IN THE MATTER OF

HOLTRACHEM MANUFACTURING CO., LLC ) ADMINISTRATIVE CONSENT  
ORRINGTON, PENOBSCOT CO., MAINE ) AGREEMENT AND  
HAZARDOUS WASTE ACTIVITIES ) ENFORCEMENT ORDER  
WASTE WATER DISCHARGE ACTIVITIES )

This Agreement by and among HoltraChem Manufacturing Co., LLC ("HMC"), the Maine Board of Environmental Protection (the "Board") and the State of Maine Attorney General is entered into pursuant to 38 M.R.S.A., Section 347-A(1) and in accordance with the Department of Environmental Protection (the "Department") Consent Agreement Policy, as amended.

The parties agree as follows:

1. HMC filed with the state of Maine as a Limited Liability Company which is organized in North Carolina and qualified to do business under the laws of Maine and which operates a chlor-alkali manufacturing facility located at River Road in Orrington, Maine (See attachment A). HMC has owned and operated the facility since April 7, 1994, after purchasing it from LCP Chemicals, Inc ("LCP").
2. HMC generates the following hazardous wastes: brine purification muds, waste water treatment sludge from the mercury cell process in chlorine production, mercury-contaminated substances meeting the characteristic of TCLP toxicity for mercury (concentration  $\geq 0.2$  mg/l), ignitable waste paint, paint solvent, and degreasing solvents, waste Poly-Chlorinated Biphenyl (PCB) and PCB contaminated material, waste acetone and methyl ethyl ketone, and off-specification waste oil with  $>4000$  ppm total halogens, which are subject to the requirements of 38 M.R.S.A., Section 1301 et seq. and the Department's Hazardous Management Waste Rules (the "Rules").
3. HMC obtained from the U.S. Environmental Protection Agency (EPA) the hazardous waste identification number MED000242701 for its site at River Road in Orrington, Maine.
4. On December 11, 1986, EPA issued LCP a Consent Agreement and Consent Order (CACO) - Resource Conservation and Recovery Act (RCRA) Docket No: 1-86-1019. In January, 1988, LCP changed its name to Hanlin Group, Inc. On December 22, 1993, the U.S. District Court for the District of Maine issued a Consent Decree filed as Civil Action 91-0188-B, United States of America, Plaintiff, v. Hanlin Group, Inc., Defendant. The federal Consent Decree superseded the 1986 EPA RCRA CACO issued to LCP. On April 13, 1995, following purchase of the facility from Hanlin Group, Inc., HMC was substituted for Hanlin Group, Inc., as the owner/operator and defendant in the Consent

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Decree which currently governs the EPA RCRA corrective actions at the Orrington facility.

HMC was made aware of past and/or unresolved violations. On June 30, 1994 the Department sent a letter to HMC outlining the past and/or unresolved violations of the Rules documented at the site while the facility was owned and operated by LCP. On September 29, 1994, HMC responded in writing and described corrective actions taken.

5. HMC has Waste Discharge License number W001048 which was issued by the Department to HMC's predecessor, LCP Chemicals - Maine, on May 17, 1990, and was transferred to HMC on June 17, 1994. On May 24, 1995, HMC filed an application for renewal of its Waste Discharge License. That application is pending with the Department.

HMC's Waste Discharge License authorizes the discharge of pollutants from three discharge points: 001, combined process and cooling waters; 002, treated process waste waters; and 003, storm water runoff. Each discharge point is subject to specific effluent limits and monitoring requirements. Among other pollutants, HMC is authorized to discharge, from discharge point 001, certain quantities of mercury. Pursuant to 38 M.R.S.A., Section 420(1), no discharges of mercury which increase natural concentrations of mercury in receiving waters are permitted. However, discharges of mercury reported to the Board on or before December 31, 1971, may continue consistent with other provisions of law. On December 12, 1971, in accordance with 38 M.R.S.A., Section 420(1), Sobin Chlor-Alkali submitted, for the Orrington facility currently owned and operated by HMC, a registration for the discharge of mercury and mercury compounds to the waters of the State through discharge point 001.

6. On September 17, 1996, staff from the Hazardous Waste Enforcement Unit of the Department's Bureau of Remediation and Waste Management inspected HMC. The inspection was conducted under the authority of and to monitor compliance with Maine's Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S.A., Section 1301 et. seq. and the Department's Hazardous Waste Management Rules (the "Rules"). The inspection revealed the following violations of the Rules:

- A. Failure to keep containers of hazardous waste closed except when adding or removing waste, in violation of the Rules, Chapter 851, Section 8B(2), Chapter 855, Section 9C and 40 CFR 265.173.

In the Sludge Building, a 30 cubic yard capacity roll off container, partially full of hazardous waste consisting of mercury-contaminated brine sludge, K071, and waste water sludge, K106, was not covered. In the Paint Shop, a 5-gallon container of hazardous waste consisting of paint and paint thinner was open. In

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the Old Chlorate Building hazardous waste storage area, a one-yard Wrangler pack which contained hazardous waste, consisting of mercury-contaminated wet sand was open. Wastes were not being added to or removed from these containers at the time of the inspection.

- B. Failure to store hazardous waste in containers that are not leaking, in violation of the Rules, Chapter 851, Section 13C(3) and 40 CFR 264.171.

Two, one-yard Wrangler Packs holding hazardous waste, consisting of mercury-contaminated waste, and located in the Old Chlorate Building hazardous waste storage area were leaking.

- C. Treatment of hazardous waste without a license from the Department to do so, in violation of Maine Rules Chapter 851, Section 12A.

In the Cell Room, a 55-gallon container of hazardous waste, waste mercury-contaminated sludge, from the Cell Room Sump Pit was being treated with a vibrator in order to physically consolidate mercury globules and remove them from the waste sludge.

- D. Failure to label or mark containers of hazardous waste with the words "Hazardous Waste" and the date upon which waste accumulation began in violation of the Rules, Chapter 851, Section 8B(3).

In the Paint Shop, four 5-gallon containers of hazardous waste were not labeled with the words "hazardous waste" or the accumulation start date. In the Old Chlorate Building hazardous waste storage area, a one-yard Wrangler Pack of hazardous waste was not marked with the words "hazardous waste" or the accumulation start date.

- E. Failure to provide and document a personnel training program for hazardous waste management that teaches employees to perform their duties in a way that ensures the facility's compliance with the Rules and to implement contingency plan, waste management and emergency response procedures, in violation of the Rules, Chapter 851, Section 8B(5) and 40 CFR 264.16.

Cell Room maintenance personnel, including Peter Black, Richard Bogan, Scott Gifford, Wayne Dean, Joshua D'Angelo and Bob Thompson, work with hazardous waste on a regular basis but did not receive any training on how to perform their hazardous waste management duties in a manner that ensures compliance with the Rules. Paint Shop personnel, including Derek LaFlamme and Larry Hatt, work with hazardous waste on a regular basis but did not receive training. Personnel

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training on the facility's Hazardous Waste Contingency Plan was not documented for Industrial and Electrical (I & E) personnel.

- F. Storage of hazardous waste for more than 90 days without a license to do so, in violation of the Rules, Chapter 851, Section 8C.

At least one 5-gallon container of hazardous waste in the form of paint waste located in the Paint Shop had been accumulated and stored on site for more than one year.

- G. Failure to store hazardous waste on a surface constructed to prevent spillage from leaving the area and to have a containment and collection system, the capacity of which must exceed 20% of the total capacity of all containers, or 110% of the capacity of the largest container used to store liquid wastes, in violation of the Rules, Chapter 851, Section 13B(1) and 13B(2).

Four, 5-gallon containers of paint, some of which were hazardous waste, were stored in the Paint Shop beside a floor drain trench with no containment to prevent spillage of paint from entering the drainage trench.

- H. Storage of hazardous waste in incompatible containers resulting in the leakage of hazardous waste from the containers, in violation of the Rules, Chapter 851, Section 851.13C(4).

Two, one-yard Wrangler packs, constructed of coated cardboard with an inner polyethylene liner and an outer mesh bag contained a mixture of hazardous waste and waste cans that punctured the inner liner causing hazardous waste to leak out through the cardboard and mesh bag, onto the pallets they were stored on and onto the floor of the hazardous waste storage area in the Old Chlorate Building.

- I. Failure to conduct and document daily inspections for containers of hazardous waste in violation of the Rules, Chapter 851, Section 13D.

HMC had not conducted or documented daily inspections of four containers of hazardous waste located in the Paint Shop. In addition, HMC did not document the inspection of containers in the hazardous waste storage area of the Old Chlorate Building on 2/19/96.

- J. Failure to determine if wastes generated are hazardous, in violation of the Rules, Chapter 851, Section 5.

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Waste paint and thinner located in the Paint Room had not been determined to be hazardous waste and therefore had not been handled as hazardous waste.

- K. Failure to provide portable fire extinguishers or fire control equipment in a hazardous waste storage area, in violation of the Rules, Chapter 851 Section 8B(5) and 40 CFR, Part 264.32.

HMC had no portable fire extinguishers or fire control equipment available in the new Sludge Building Hazardous Waste Storage Area.

- L. Failure to maintain an up-to-date contingency plan for responding to hazardous waste management emergencies, in violation of the Rules, Chapter 851, Section 8B(5) and 40 CFR 264.54.

HMC had an out of date contingency plan to address hazardous waste management and emergencies. The contingency plan had not been revised since June 1995 and did not reflect several changes at the facility including a new primary emergency coordinator, two new hazardous waste storage areas and up-to-date contacts for the facility's hazardous waste emergency contractors.

- M. Failure to annually renew written aid agreements with local police, fire departments, emergency response teams and hospitals which show that arrangements have been made to familiarize these organizations with HMC, in violation of the Rules, Chapter 851, Section 13C(7)(c)(ii) and 40 CFR 264.37.

Aid agreements had not been renewed since September, 1994.

- N. Failure to keep a log to document inspections of all ground water monitoring equipment associated with Landfill #5, in violation of the Rules, Chapter 855, Section 9A(5) and 40 CFR 265.15(b)(1).

HMC did not have a log of inspections for all ground water monitoring equipment associated with Landfill #5. The log is required to contain records of the date and time of inspections, the name of the inspector, notations of observations made and the date and nature of any repairs or other remedial actions.

7. On January 25, 1997, at approximately 6:00 p.m. a high level pH alarm sounded at the weir for discharge point 001, indicating that waste waters with a high pH were discharging into the Penobscot River. The source of the discharge was identified by HMC on January 31, 1997 to be caustic soda or sodium hydroxide leaking into the steam jacket of a decomposer and entering the industrial sewer system. On January 27, 1997, HMC contacted the Department and began efforts to neutralize the discharge with

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hydrochloric acid. In a letter dated February 11, 1997 from HMC to the Department, HMC reported that continuous monitoring of the pH at discharge point 001 ranged from 1.0 to 13.5 Standard Units (SU) through the course of January 25th through January 31st. On each of these days, except January 30th, the pH of the discharge at point 001 ranged above 12.5 and/or below 2.0 SU. Wastes with a pH of less than or equal to 2 or greater than or equal to 12.5 SU are defined as hazardous waste by virtue of the characteristic of corrosivity and are assigned the identification number D002 pursuant to the Rules, Chapter 850, Section B(3). HMC's Waste Discharge License limits the pH of discharges from discharge point 001 to between 6.0 and 9.0 SU. On each of the days from January 25, 1997 through January 31, 1997 the pH of the discharge at point 001 ranged above 9.0 and/or below 6.0 SU. HMC did not immediately report this discharge to the Department of Public Safety. HMC's first report to the Department occurred on January 27, 1997 at 9:10 am, over 39 hours after the discharge of hazardous waste was first discovered by HMC employees.

The Department asserts that these actions constitute the following violations:

- A. Discharge of a hazardous waste into land/water of the State without a license to do so, in violation of 38 M.R.S.A. Sections 1306(3) and 1317-A;
  - B. HMC failed to immediately report a discharge of hazardous matter to the Department of Public Safety, a violation of 38 M.R.S.A. Section 1318-B; and
  - C. HMC discharged pollutants in violation of its Waste Discharge License and 38 M.R.S.A., Section 414(5).
8. On February 21, 1997, the Department issued a Notice of Violation (NOV) for the violations cited in paragraphs 6 and 7 above.
9. In 1995 HMC determined that the drain from the brine testing laboratory sink did not lead to the waste water treatment facility as HMC had previously thought but rather led to the leach field that was constructed in 1988 and 1989 and located in a wooded area east of the plant. As a result of this discovery it was determined that since 1989 brine samples containing mercury were discharged to the leach field through the septic system. In July 1996 HMC had the septic system tank pumped out and the waste was sampled, analyzed and disposed of as hazardous waste on July 24, 1996. Solids in the septic tank itself contained 102 mg/kg mercury and solids in the distribution box contained 71 mg/kg mercury. The February 21, 1997 NOV required HMC to submit within forty-five (45) days for the Department's review and approval a plan for sampling of the septic system leach field for mercury contamination. HMC submitted such a plan on April 11, 1997 and received the Department's approval on June 10, 1997 for its implementation. The discharges to the septic system and leach field constitute the following violation:

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HMC is not licensed to discharge mercury to its septic system. The discharge of non-domestic pollutants, such as mercury, without a license from the Department to do so is a violation of 38 M.R.S.A., Section 413(1-B).

10. On April 11, 1997, the Department received HMC's response to the February 21, 1997 NOV. The response described the initial corrective actions undertaken by HMC to address the violations and included the following documents:
  - A. Personnel training records for HMC employees including Peter Black, Richard Bogan, Scott Gifford, Wayne Deane, Joshua D'Angelo and Bob Thompson. HMC wrote that Derek LaFlamme and Larry Hatt had left HMC employment (to address 6E above);
  - B. Daily inspection record form (to address 6I above);
  - C. A waste profile sheet with decision making flow diagrams for guidance to make waste determinations (to address 6J above);
  - D. A revised hazardous waste contingency plan (to address 6L above);
  - E. Letters from HMC requesting aid agreements from local police, fire, spill response teams and hospitals (to address 6M above);
  - F. Maintenance schedule and inspection form for ground water monitoring equipment associated with Landfill #5 including wells numbered B-303, B-304, B-306 and B-307 (to address 6N); and
  - G. A proposed work plan for the leach field investigation (to address 9 above).
11. On January 27, 1997, Department staff visited the HMC facility in response to HMC's notification of the high pH discharge referenced in Paragraph 7 above. During that visit, HMC and Department staff observed seepage from several locations along the bank of the Southerly Stream, which flows adjacent to the HMC production facility and near the weir used for flow monitoring and sampling of discharge point 001. The Southerly Stream is a natural waterway, which is a tributary to the Penobscot River, and is classified as a Class B water body. The seeps were determined to contain pollutants, including, but not limited to, mercury and high pH which were discharged to the Southerly Stream. Grab samples of water taken in 1988 and 1989 from the Southerly Stream indicated that concentrations of mercury had been present since at least 1988. Since January 1997, the pH of the Southerly Stream when tested was in the range of 9 to 10 SU. Tests of grab samples of water in the Southerly Stream have indicated mercury concentrations of

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between 0.68 ug/L and 2.2 ug/L during September 1994, 0.77 ug/L during April 1995, between 1.2 ug/L and 8.2 ug/L during February 1997, and between 0.7 ug/L and 1.4 ug/L during June 1997. The relevant ambient water quality criteria for mercury are 0.012 ug/L for chronic conditions and 2.1 ug/l for acute conditions. Additionally, mercury was detected in grab samples of sediment in the bed of the Southerly Stream with concentrations of between 6.5 mg/kg and 78 mg/kg during September 1994, and between 7.7 mg/kg and 91 mg/kg during June 1997. The Southerly Stream has been identified as an "Area of Concern" within the RCRA corrective action site investigation conducted pursuant to the civil action described in Paragraph 4 above. A contractor, hired by HMC to investigate the discharge of mercury-contaminated waste brine from the North Filter Backwash Receiver Tank described in Paragraphs 12 and 13 below, indicated in an investigation report that the likely receptors of the ground water contaminated with mercury as a result of that incident had been the Southerly Stream (via corridors associated with underground piping in that area) and a groundwater collection system. The circumstances described above resulted in the following violations:

- A. HMC caused the quality of the water in the Southerly Stream to be unsuitable to support all designated uses as required by 38 M.R.S.A. Section 465(3) in that the pH of the Southerly Stream exceeded an accepted maximum level of 8.5 SU as set forth in 38 M.R.S.A., Section 464(4)(A)(5);
  - B. HMC caused mercury concentrations in the Southerly Stream to exceed established numeric water quality criteria in violation of 38 M.R.S.A., Section 420(2); and
  - C. HMC directly or indirectly discharged pollutants, including mercury, to the waters of the State without a license to do so in violation of 38 M.R.S.A., Sections 413 and 420.
12. On February 19, 1997, during a plant outage an HMC employee noticed a drop in the level of the brine in the 13,500 gallon, in-ground, concrete fiberglass-lined, North Filter Backwash Receiver Tank ("North Sludge Pit Tank"). A sample of the brine in the North Sludge Pit Tank contained approximately 25 mg/l of mercury. Waste containing 0.2 mg/l or more of mercury is hazardous waste, pursuant to the Hazardous Waste Management Rules, Chapter 850, Section 3B(4). The drop in the static level of the contents of the tank was determined to be a leak from the tank to the environment. Typically, the tank is not in a static state such that a drop in the level of brine would be noticeable. At the time of the discharge, the North Sludge Pit tank did not have any secondary containment capacity and was not certified as required under the Rules, Chapter 856, Section 6D for treatment of hazardous waste. In addition, the tank has no leak detection system in place so it is not possible to know how long the tank had been discharging hazardous waste into the ground prior to February 19, 1997.

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HMC estimated that 30,000 gallons of hazardous waste brine containing mercury leaked out of the tank over a 13 day period (from February 19th to March 4th), during which time HMC continued use of the tank. A contractor hired by the Department estimated that the leak was more severe and had been ongoing for a minimum of two months in which time it leaked approximately 270,000 gallons of hazardous waste into the ground.

The leak continued until March 4, 1997 when the contents of the North Sludge Pit Tank were transferred to the concrete, fiberglass lined, inground South Filter Backwash Receiver Tank (South Tank).

This discharge was discovered by HMC personnel on February 19, 1997 but was not reported pursuant to the procedures set forth in 38 M.R.S.A., Section 1318-B. The discharge was reported to the Department on February 24, 1997, five days after the discharge was first discovered.

This discharge resulted in the following violations by HMC:

- A. HMC discharged hazardous waste into or upon land and water of the State without a license to do so, in violation of 38 M.R.S.A. Sections 1306(3) and 1317-A;
  - B. HMC failed to immediately report a discharge of hazardous matter to the Department of Public Safety, in violation of 38 M.R.S.A. Section 1318-B; and
  - C. HMC directly or indirectly discharged pollutants, including mercury, to the waters of the State without a license to do so in violation of 38 M.R.S.A., Sections 413 and 420.
13. The Department hired a contractor to develop a plan to investigate the possibility of recovery of the discharged hazardous waste from the North Sludge Pit Tank. HMC hired a contractor to implement the investigation plan. The investigation including Geoprobe borings and sample analysis began on April 8, 1997. HMC submitted the final report on the investigation on May 5, 1997.
14. On May 1, 1997, HMC reported that approximately 1,000 gallons of mercury-bearing brine solution at a concentration of approximately 20 mg/l mercury spilled over the top of the 340,000 gallon brine treatment facility clarifier tank and went onto the ground. This discharge of brine from the clarifier was a hazardous waste discharge due to its concentration of mercury (more than 0.2 mg/l). This discharge was reported immediately by HMC. This discharge of mercury-contaminated brine followed the natural drainage to

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discharge point 003, and discharged into the Penobscot River. This constitutes the following violations:

- A. Discharge of hazardous waste into or upon land and water of the State without a license to do so, in violation of 38 M.R.S.A. Sections 1306(3) and 1317-A.;
  - B. HMC's Spill Prevention, Control, and Countermeasures (SPCC) plan dated June, 1995 specifies that there is overflow protection via a line that leads to the lined brine lagoon. A plug (referred by HMC as a "blind") had been installed in the clarifier overflow line so that there was no protection from brine overflowing the top of the clarifier and onto the ground. This action constitutes failure to manage its facility in a manner to prevent or minimize risk to the environment, in violation of Maine's Hazardous Waste Management Rules Chapter 851, Section 13 A and 40 CFR 264.31 as incorporated by reference in the Rules, Chapter 851, Section 8B(5), (HMC has subsequently removed this plug); and
  - C. HMC discharged pollutants, including mercury, to the waters of the State without a license to do so in violation of 38 M.R.S.A., Sections 413 and 420.
15. On May 14, 1997, the Department issued a Notice of Violation (NOV) for the violations cited in paragraphs 12A & B, and 14 above.
16. On June 22, 1995, HMC submitted a request for an extension for waste water treatment unit certification required pursuant to the Rules, Chapter 856, Section 6D. In follow up to the request, HMC submitted a Scope of Work & Schedule for Waste Water Treatment Unit Certification (Scope of Work & Schedule) on August 18, 1995 that listed the following nine (9) units in its existing waste water treatment system:
- 1. Unit 1 - Cell Room Sump;
  - 2. Unit 2 - Cell Room Sump;
  - 3. Unit 3 - Neutralizing Tank;
  - 4. Unit 4 - Neutralizing Tank;
  - 5. Unit 5 - Waste Water Circulation Tank;
  - 6. Unit 6 - Waste Water Filter;
  - 7. Unit 7 - North Filter Backwash Receiver Tank ("North Sludge Pit");
  - 8. Unit 8 - South Filter Backwash Receiver Tank ("South Sludge Pit");
  - 9. Unit 9 - Sludge Filter.

The extension was granted to May 31, 1997 by the Department, under the conditions that quarterly progress reports be submitted by HMC and compliance with the schedule of waste water treatment system improvements be maintained pursuant to the Scope of Work & Schedule.

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Since October 1996, HMC has not submitted project schedules, quarterly reports or documented improvements to its waste water treatment system pursuant to the Scope of Work & Schedule. These actions constitute the following violations:

Operation of a hazardous waste treatment facility without a license to do so from the Department, in violation of the Rules, Chapter 856, Sections 4E and 5A and operation of waste water treatment units for hazardous waste without certification, in violation of the Rules, Chapter 856, Section 6D and failure to submit quarterly progress reports and project schedules, and document waste water treatment unit improvements as scheduled under its extension for certification.

17. HMC's Waste Discharge License limits the pH of waste waters discharged from discharge point 001 to a minimum of 6.0 SU and a maximum of 9.0 SU at any time. According to the license, pH is to be measured daily and reported to the Department on a monthly basis. During the following months, HMC reported that it discharged waste water having pH values outside of the allowable range, and in violation of its Waste Discharge License and 38 M.R.S.A., Section 414(5).

Month	Discharge Point	Minimum pH	Maximum pH	Number of Violations reported
May 1995	001		9.5	1
May 1997	001	5.8	10.5	2

18. HMC's Waste Discharge License limits the quantity of mercury discharged to a monthly average of 0.0456 pounds per day and a daily maximum of 0.1048 pounds per day.

- A. During the following months, HMC reported that it discharged quantities of mercury in excess of those limits, and in violation of its Waste Discharge License and 38 M.R.S.A., Section 414(5).

Month	Daily Maximum Discharged	Number of Daily Maximum Violations
September 1994	0.592 lb/day	1
May 1995	0.140 lb/day	1

- B. On August 2, 1995, a discharge of 0.732 lb/day of mercury was reported by HMC. The report indicated that between 6:30 a.m. on August 1, 1995 and 6:30 a.m. on August 2, 1995 HMC discharged into the Penobscot River 65,000 gallons of

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waste water with a mercury content of 1.350 ppm through discharge point 001 in violation of its discharge limits. Waste water containing 0.2 mg/l (ppm) or more of mercury is a hazardous waste.

The Department asserts that this discharge constitutes the following violations:

- (1) Discharge of wastewaters in violation of its Waste Discharge License and 38 M.R.S.A., Section 414 (5); and
  - (2) Discharge of hazardous waste into or upon the water, land or ambient air without a license to do so, in violation of 38 M.R.S.A., Section 1306(3) and 1317-A.
19. Tests conducted on 10 days during September 1994, April 1995, March 1996, April 1997, and May 1997, detected concentrations of mercury ranging from 1.2 to 37 ug/L being discharged from discharge point 003 to the Penobscot River, in violation of 38 M.R.S.A., Sections 413 and 420.
  20. Pollutants authorized by HMC's Waste Discharge License are discharged to the Penobscot River upstream of a cove adjacent to HMC's property. Pollutants found in the Southerly Stream and discharge point 003 are discharged to the same cove. Further, ground water contaminated with mercury on HMC's property flows to and eventually discharges to the same cove in the Penobscot River. In combination, discharges of mercury by HMC to the Penobscot River caused or contributed to concentrations of mercury in the water of the cove adjacent to HMC's property to exceed the relevant chronic ambient water quality criteria of 0.012 ug/L. In June 1995, samples of water taken in the cove showed mercury concentrations of 0.0703 ug/L and 0.0267 ug/L. In August 1997, from a total of 50 samples of water taken from the cove, 30 samples showed mercury concentrations above the chronic ambient water quality criteria, with values ranging from 0.0131 ug/l to 0.173 ug/l.
  21. HMC's Waste Discharge License requires that the pH of discharge point 001 be monitored once per day using a grab sample. In addition to doing this monitoring, HMC maintains a continuous recording pH meter at discharge point 001. The continuous pH meter has frequently recorded pH values outside of the allowable range established by HMC's Waste Discharge License.
  22. On July 19, 1997, HMC notified the Department that starting on July 17, 1997 and continuing for three (3) days until July 19, 1997, plant operators experienced problems in processing waste waters through its waste water treatment units and caused waste water to discharge from the cell room sumps and flood the cell room floor. On July 19, 1997, the third day of the discharge from the cell room sumps, facility operators noted that

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waste water was leaking out of an exit door and running onto the ground outside of the cell building. HMC reported that the waste water contained 1.66 mg/l of mercury and that the waste water leaked out of the exit door at a rate of about 1 gallon per minute and occurred intermittently over a period of several hours. HMC estimated that approximately 270 gallons of untreated waste water discharged from the cell room to a paved area and to soil in the vicinity of the hydrogen compressor building outside of the cell building. HMC was unable to estimate the total volume of untreated waste water discharged from the sumps onto the cell room floor. Waste water containing 0.2 mg/l or more of mercury is a hazardous waste. Discharges of hazardous waste from hazardous waste treatment units including the cell room sumps are discharges pursuant to the Rules and 38 M.R.S.A. Section 1317. HMC also reported that the discharge was finally stopped at about 4:00 p.m. on July 19, 1997. HMC did not report the discharge to the Department of Public Safety until approximately 5:55 p.m. on July 19, 1997, three days after the discharge from the cell room sumps began and about two hours after the discharge was stopped. HMC believed it did not have to report the discharge until the discharge escaped from the cell room floor onto the ground. This discharge constitutes the following violations:

- A. HMC discharged hazardous waste into or upon the water, land or ambient air without a license to do so, in violation of 38 M.R.S.A. Section 1306(3) and 1317-A;
  - B. HMC failed to immediately report a discharge of hazardous matter to the Department of Public Safety, in violation of 38 M.R.S.A. Section 1318-B; and
  - C. HMC directly or indirectly discharged pollutants, including mercury, to the waters of the State without a license to do so, in violation of 38 M.R.S.A. Section 413 and 420.
23. On August 19, 1997, at 6:00 a.m., HMC discovered an overflow of mercury-contaminated condensate from a hydrogen condensate sump due to a malfunction of a pump. Approximately 200 gallons of mercury-contaminated condensate overflowed from the sump. The condensate contained 0.295 mg/l of mercury. Wastes, including discharges, with more than 0.2 mg/l of mercury are hazardous waste. HMC reported the discharge to the Department of Public Safety at 9:00 a.m. on August 19, 1997. As a result of this incident, HMC discharged hazardous waste without a license to do so, in violation of 38 M.R.S.A. Section 1306(3) and 1317-A, and HMC directly or indirectly discharged pollutants, including mercury, to the waters of the State without a license to do so, in violation of 38 M.R.S.A. Section 413 and 420.

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24. On January 25, 1996, the Department sent a Notice of Violation to HMC for violations resulting from a hazardous waste management inspection conducted on June 14, 1995 and for discharges of hazardous matter.

The violations cited in Paragraphs 6G, 7A & B, 12A & B, 14A, 22A & B, and 23 above constitute repeat violations which HMC had previously been notified about in the January 25, 1996 Notice of Violation.

25. On July 18, 1997, the Department sent a Notice of Violation to HMC for violations listed in Paragraphs 7C, 9, 11, 12C, 14C, 17, 18A, 18B(1) and 19 above.
26. On July 25, 1997, the Department sent a Notice of Violation to HMC for violations listed in Paragraphs 16, 18B(2) and 22 above.
27. On November 13, 1997, the Department sent a Notice of Violation to HMC for the violations cited in Paragraph 23 above.
28. The Board has regulatory authority over the violations described herein.
29. This Agreement shall not become a part of the official record unless and until it is accepted by the Board.
30. To resolve the violations referenced in paragraphs 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 22, and 23 above, HMC agrees to:

- A. Henceforth comply with all applicable standards for hazardous waste generators pursuant to 38 M.R.S.A. 1301 et. seq. and the Rules, Chapter 850 through 857, and including but not limited to the following:
- (1) Immediately report any discharge of hazardous matter to the Department of Public Safety pursuant to 38 M.R.S.A. Section 1318-B;
  - (2) Close all containers that hold hazardous waste unless waste is being added or removed from the container pursuant to the Rules, Chapter 851, Section 8B(2) and 40 CFR 265.173;
  - (3) Prevent hazardous waste from leaking or spilling out of containers;
  - (4) Immediately stop treating hazardous waste in the Cell Room as cited in paragraph 6C above unless or until HMC applies for and receives a permit or an abbreviated license for such treatment of hazardous waste from the Department;

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- (5) Label all containers of hazardous waste with the words "Hazardous Waste", and mark the date upon which accumulation begins for those containers that accumulate waste pursuant to the Rules, Chapter 851, Section 8B(3);
- (6) Do not store hazardous waste for greater than 90 days without a license to do so pursuant to the Rules, Chapter 851, Section 8C;
- (7) Store containers of hazardous waste in an area that provides containment that exceeds 20% of the total capacity of all containers or 110% of the capacity of the largest container (whichever is greater) and which is constructed to prevent spillage from leaving the area pursuant to the Rules, Chapter 851, Section 13B(1) & (2);
- (8) Store hazardous waste only in containers that are compatible with the waste, pursuant to the Rules, Chapter 851, Section 13C(4), e.g. do not store cans in Wrangler Packs;
- (9) Conduct daily inspections of all containers holding hazardous waste, record the inspections in a log book and maintain inspection logs for one year pursuant to the Rules, Chapter 851, Section 13D and 851, Section 9D;
- (10) For all wastes generated by HMC, determine which wastes are hazardous wastes, pursuant to the Rules, Chapter 851, Section 5;
- (11) Arrange for personnel who handle hazardous waste to be trained to perform their duties in a way that ensures compliance with the Rules and to teach them how to implement the contingency plan, and document and update such training annually, pursuant to the Rules, Chapter 851, Section 8B(5) and 40 CFR 264.16;
- (12) Maintain fire control equipment in the new Sludge Building pursuant to the Rules, Chapter 851, Section 8B(5);
- (13) Maintain and update the facility's Contingency Plan for hazardous waste emergencies as necessary, pursuant to the Rules, Chapter 851, Section 8B(5) and 40 CFR 264 Subpart D;
- (14) Maintain, and update, aid agreements from the local police, fire departments, emergency response teams and hospital. Update these

annually and keep them on file, pursuant to the Rules, Chapter 851, Section 13C(7)(ii) and 40 CFR 264.37; and

- (15) Maintain a written inspection schedule for ground-water monitoring equipment for landfill #5 pursuant to 40 CFR 265.15(b)(1);
- B. Ensure that laboratory wastes, any mercury-containing wastes and other unlicensed wastes are not discharged to septic systems at the facility and that all hazardous wastes are managed and disposed of in accordance with the Rules;
- C. On or before December 15, 1997, submit to the Department a plan and implementation schedule for the Department's review and approval to complete the investigation of the extent of contamination in all existing septic tanks, pipes and distribution box systems whether or not those systems are currently in use as identified in the report dated October 17, 1997 entitled "Summary Report Septic Tanks and Leach Fields." HMC shall, within seven (7) calendar days from the Board's approval of this Agreement, identify by a letter to the Department and EPA, leach fields #1, #2 and #8 as "Areas of Concern" within the RCRA corrective action site investigation conducted pursuant to the civil action described in Paragraph 4 above. HMC shall in conjunction with the other Responsible Parties investigate these leach fields to the Department's satisfaction. The results shall be recorded in the final Site Investigation Report, and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- D. On or before December 22, 1997, hire an independent, registered engineer who is a certified American Petroleum Institute (API) Standard 653 Inspector to conduct an on-site evaluation of the risk(s) posed by tanks and piping whether in-ground or above ground, at the facility. The engineer shall evaluate the existing inspection and preventative maintenance program and make written recommendations to HoltraChem and the Department on the method and frequency of inspection and/or testing required to determine the integrity and safety of all tanks and piping systems that stores or transports chemicals, process wastes and waste waters. The recommendations shall include a system for tracking the inspection and testing schedule necessary to conform with recommended sound engineering practices. The engineer shall provide HoltraChem and the Department with a written report which describes the findings and recommendations before February 13, 1998. As part of the report, the engineer shall give special consideration to identifying and prioritizing the areas or situations which may pose a risk of leakage or failure and recommend any appropriate testing methods and corrective measures as necessary to minimize

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those risks. HoltraChem shall provide the Department with a plan and schedule to address the engineer's recommendations before March 13, 1998;

- E. On or before November 28, 1997, HMC must complete installation of a fence between the Southerly Stream and the Ferry Road residences as approved by the Department. Signs with appropriate warning language must be posted on the fence;
- F. Submit the monitoring results within thirty (30) days of receipt of the laboratory report to the Department c/o Stacy Ladner for the quarterly drinking water well monitoring of the Ferry Road residences. The monitoring must be maintained for a minimum of one year at which time the Department will review the results with HMC before determining whether or not the monitoring must continue and at what interval;
- G. Immediately begin weekly monitoring for pH and filtered and unfiltered mercury in surface waters in the Southerly Stream and discharge point 003. All test methods and record keeping shall be maintained in the same manner as those contained in the terms and conditions of HMC's Waste Discharge License. Beginning on March 31, 1998, the flow in the Southerly Stream and outfall 003 shall be measured at the time the samples are collected. Monitoring results shall be submitted with Discharge Monitoring Reports required by HMC's Waste Discharge License. Copies of the monitoring results and Discharge Monitoring Reports shall also be submitted to the Department c/o Stacy Ladner. This monitoring shall continue unless and until suspended or modified by the Department. This monitoring shall be conducted as part of the comprehensive monitoring plan referenced in Paragraph J below;
- H. Maintain continuous monitoring of the pH of each batch of treated waste water discharged from discharge point 002. Prior to the release of waste water from discharge point 002 to the plant's sewer system for ultimate discharge through discharge point 001, the pH of each batch shall be within the range of 6.0 to 9.0 SU. All testing shall be conducted using methods approved pursuant to HMC's Waste Discharge License and results shall be reported to the Department as required on Discharge Monitoring Reports for discharge point 002. This monitoring shall continue unless and until suspended or modified by the Department, or superseded by a subsequent Waste Discharge License condition;
- I. Maintain continuous monitoring of pH at discharge point 001 using methods approved pursuant to HMC's Waste Discharge License. The results shall be reported to the Department as required on Discharge Monitoring Reports for discharge point 001, showing the instantaneous minimum and maximum values

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recorded. This monitoring shall continue unless and until suspended or modified by the Department, or superseded by a subsequent Waste Discharge License condition;

- J. On or before January 9, 1998, submit to the Department for review and approval a comprehensive monitoring plan to evaluate the concentration of mercury in groundwaters and surface waters on the site and in the Penobscot River adjacent to the site. The plan shall include sampling of the groundwater monitoring wells. The plan shall also include the location, type and frequency of sampling performed on waste water discharges and air emissions. The plan must identify the methods and frequency proposed for all sampling and analytical work to be performed. The plan must provide for reporting all results to the Department on a quarterly basis and the total quantity of mercury entering the Penobscot River on a quarterly basis, and include a summary of all results from previous quarters;
- K. Implement interim corrective actions for groundwater contamination in the vicinity of the north bank of the Southerly Stream in accordance with plans and schedules approved by the Department. The corrective actions shall be designed to prevent the discharge of pollutants to the Southerly Stream. Appropriate treatment and disposal of wastes must be reviewed and approved by the Department. HMC shall in conjunction with the other Responsible Parties address the long term treatment of contamination reaching the Southerly Stream to the Department's satisfaction in the corrective action site investigation, final Site Investigation Report, and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- L. Within thirty (30) days of receipt of the Department's review and approval, implement as modified and approved, the interim plan dated November 14, 1997 to prevent sediment from the Southerly Stream and storm water outfall 003 from entering the Penobscot River, including procedures to manage and maintain the structures and/or controls, and provisions for the removal, analysis and disposal of any trapped sediment. HMC shall, in conjunction with the other Responsible Parties, address to the Department's satisfaction the long term remediation of contaminated sediments in the Southerly Stream and 003 drainage ways in the corrective action site investigation, final Site Investigation Report, and potential remediation shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;

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- M. On or before June 1, 1998, complete repairs and installation of a leak detection system to the North Filter Backwash Receiver Tank System in accordance with the Department's approval and return it to service. HMC must notify the Department that the repairs and installation of leak detection system is complete and the date the tank system will be returned to service. After removing the South Filter Backwash Receiver Tank System from service, HMC must inspect the tank and submit the results of the inspection and a plan for any future use of that tank to the Department for its review and approval;
- N. Prior to placing the clarifier tank back in service, install a high level alarm;
- O. On or before March 31, 1998, submit to the Department a waste water certification as required by the Rules, Chapter 856, Section 6D for the wastewater treatment units;
- P. On or before December 19, 1997, complete the implementation of the work plans for the investigation and removal of soils contaminated by mercury resulting from the discharge of hazardous wastes from the cell room sump referenced in Paragraph 22 above and the hydrogen condensate sump referenced in Paragraph 23 above, as approved by the Department;
- Q. On or before January 23, 1998, submit for the Department's review and approval HMC's complete response to the Department's comments of November 14, 1997 on the Corrective Action Supplemental Site Work Plan. Along with HMC's response to the Department's comments, HMC shall submit an Implementation Plan and Schedule for addressing the Department's comments of November 14, 1997 and the agreed upon action items set forth in HMC's September 19 and October 17, 1997 responses to the Department's letter of August 21, 1997. This response shall be submitted to the Department c/o Stacy Ladner. The plan shall be implemented in conjunction with the other Responsible Parties to the Department's satisfaction, and results of the plan shall be included in the final Site Investigation Report and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- R. Pay to the Hazardous Waste Fund, c/o the Department of Environmental Protection, a penalty of Five Hundred Forty Thousand Dollars (\$540,000.00) for hazardous waste violations cited in paragraphs 6, 7, 12, 14, 16, 18, 22, and 23 above in accordance with the following payment schedule:

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- (1) A sum of Sixty Thousand Dollars (\$60,000.00) due on or before December 15, 1997; and
- (2) The sum of Four Hundred Eighty Thousand Dollars (\$480,000.00) in principle plus Thirty Thousand Nine Hundred Seventy-Two Dollars and Twelve Cents (\$30,972.12) in interest, based on eight percent per annum over an eighteen month period, paid in monthly installments of Twenty-Eight Thousand Three Hundred Eighty-Seven Dollars and Thirty Four Cents (\$28,387.34) each, for a total sum of installments of Five Hundred Ten Thousand Nine Hundred Seventy-Two Dollars and Twelve Cents (\$510,972.12). The installments shall be due on the fifteenth day of each month with the first monthly installment of \$28,387.34 due on January 15, 1998 and the last or eighteenth monthly installment due on June 15, 1999; and

S. Pay to the Treasurer, State of Maine, a penalty of One Hundred Sixty Thousand Dollars (\$160,000.00) for water discharge violations in paragraphs 7, 9, 11, 12, 14, 17, 18, 19, 22, and 23 above in accordance with the following payment schedule:

- (1) A sum of Forty Thousand Dollars (\$40,000.00) due on or before December 15, 1997; and
- (2) The sum of One Hundred Twenty Thousand Dollars (\$120,000.00) in principle plus Seven Thousand Seven Hundred Forty-Three Dollars and Twelve Cents (\$7,743.12) in interest, based on eight percent per annum over an eighteen month period, paid in monthly installments of Seven Thousand Ninety-Six Dollars and Eighty-Four Cents (\$7,096.84) each, for a total sum of installments of One Hundred Twenty-Seven Thousand Seven Hundred Forty-Three Dollars and Twelve Cents (\$127,743.12). The installments shall be due on the fifteenth day of each month with the first monthly installment of \$7,096.84 due on January 15, 1998 and the last or eighteenth monthly installment due on June 15, 1999;

T. In the event of any default in the payment schedule in Paragraphs 30R and S above, including failure to make payment within a thirty (30) day grace period from the due date, a late fee in the amount of one hundred dollars (\$100) per week beginning from the time of the due date will be added to the principle balance and shall accrue until the scheduled payment and late fee are paid in full.

31. In addition to the corrective actions noted in this agreement, and not in response to any known violations, but in support of the corrective action assessment, air emission

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licensing and the comprehensive site monitoring (Paragraph 30J), HMC agrees to: On or before January 9, 1998, submit a plan for ambient air monitoring for mercury for the Department's review and approval. The plan must include a minimum of three tekran air monitoring devices, a meteorological data collection system and include a schedule and proposed locations for installation of the equipment. HoltraChem shall submit the air monitoring data to the Department quarterly.

32. Dispute Resolution:

A. Unless otherwise expressly provided for in this Consent Agreement and Enforcement Order, the dispute resolution procedures of this Paragraph 32 shall be the exclusive mechanism to resolve disputes arising under Paragraphs 30C, 30J, 30K, 30L, 30Q and 31 and order sections C, J, K, L, Q and R of this Consent Agreement and Enforcement Order between HMC and the Department (the "Parties");

B. The dispute shall in the first instance be the subject of informal negotiations between the Parties for a period of up to fifteen (15) working days from the time notice of existence of the dispute is given. The periods for negotiations may be extended by mutual agreement of the Parties. The dispute shall be considered to have arisen three (3) days from the mailing by one Party to the other Party of a written notice of dispute in accordance with the Notice provision set forth in Paragraph 32C below;

C. Notice:

All notice, reports and correspondence required pursuant to this Consent Agreement and Enforcement Order shall be sent to and shall be deemed to have been made upon receipt of a certified letter or receipted express delivery by the following persons:

For the Department:

Director  
Division of Oil and Hazardous Waste Facilities Regulation  
Bureau of Remediation and Waste Management  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

For HMC:

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John S. Rudd, Esq.  
Preti, Flaherty, Beliveau & Pachios, L.L.C.  
443 Congress Street  
P.O. Box 11410  
Portland, ME 04104-7410

and

Glenn Carr, Plant Manager  
HoltraChem Manufacturing Co., L.L.C.  
P.O. Box 189  
River Road, Route 15  
Orrington, ME 04474

- D. In the event that the Parties cannot resolve a dispute by informal negotiations under Subparagraph 32B, then the position advanced by the Department shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, HMC invokes the formal dispute resolution procedures of this Subparagraph by serving on the Department a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by HMC;
- E. The Commissioner, or his/her designee, may require additional information from HMC or schedule a conference concerning the dispute;
- F. The Commissioner, or his/her designee, shall issue a final written decision resolving the dispute based on the administrative record. This decision shall be binding upon HMC and subject only to judicial review under the Maine Administrative Procedure Act, 5 M.R.S.A. Section 8001 et seq. provided, however, that any subsequent corrective action permit or order issued by the Department for the HMC site shall not be subject to these dispute resolution procedures.

33. Reservation of Rights

This Consent Agreement and Enforcement Order is not intended to alter the obligations or rights of HMC pursuant to the Federal Consent Decree in Civil Action No. 91-0188-B, referenced in Paragraph 4 above. To the extent that this Order or any implementation activities required pursuant to this Order subject HMC to obligations that conflict with obligations under the Federal Consent Decree, HMC retains and reserves all its legal rights, actions and remedies under the Federal Consent Decree and state and federal law.

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34. The Board and the State of Maine Attorney General grant HMC a release of their causes of action against HMC for the specific violations listed in Paragraphs 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 22 and 23 above, except that no release is granted for any discharges to or contamination of land, water or ambient air, or for damage to natural resources as a result of activities at HMC. The release shall not become effective unless and until all action listed in Paragraphs 30 and 31 above are completed in accordance with the express terms and conditions of this Agreement.

### ORDER

Pursuant to 38 M.R.S.A., Section 347-A(1) and the Department's Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board ORDERS HMC to:

- A. Henceforth comply with all applicable standards for hazardous waste generators pursuant to the Rules, Chapter 850 through 857, including but not limited to the following:
  - (1) Immediately report any discharge of hazardous matter to the Department of Public Safety pursuant to 38 M.R.S.A. Section 1318-B;
  - (2) Close all containers that hold hazardous waste unless waste is being added or removed from the container pursuant to the Rules, Chapter 851, Section 8B(2) and 40 CFR 265.173;
  - (3) Prevent hazardous waste from leaking or spilling out of containers;
  - (4) Immediately stop treating hazardous waste in the Cell Room as cited in paragraph 6C above unless or until HMC applies for and receives a permit or an abbreviated license for such treatment of hazardous waste from the Department;
  - (5) Label all containers of hazardous waste with the words "Hazardous Waste", and mark the date upon which accumulation begins for those containers that accumulate waste pursuant to the Rules, Chapter 851, Section 8B(3);
  - (6) Do not store hazardous waste for greater than 90 days without a license to do so pursuant to the Rules, Chapter 851, Section 8C;
  - (7) Store container of hazardous waste in an area that provides containment that exceeds 20% of the total capacity of all containers or 110% of the

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capacity of the largest container (whichever is greater) and which is constructed to prevent spillage from leaving the area pursuant to the Rules, Chapter 851, Section 13B(1) & (2);

- (8) Store hazardous waste only in containers that are compatible with the waste, pursuant to the Rules, Chapter 851, Section 13C(4), e.g. do not store cans in Wrangler Packs;
  - (9) Conduct daily inspections of all containers holding hazardous waste, record the inspections in a log book and maintain inspection logs for one year pursuant to the Rules, Chapter 851, Section 13D and 851, Section 9D;
  - (10) For all wastes generated by HMC, determine which wastes are hazardous wastes, pursuant to the Rules, Chapter 851, Section 5;
  - (11) Arrange for personnel who handle hazardous waste to be trained to perform their duties in a way that ensures compliance with the Rules and to teach them how to implement the contingency plan, and document and update such training annually, pursuant to the Rules, Chapter 851, Section 8B(5) and 40 CFR 264.16;
  - (12) Maintain fire control equipment in the new Sludge Building pursuant to the Rules, Chapter 851, Section 8B(5);
  - (13) Maintain and update the facility's Contingency Plan for hazardous waste emergencies as necessary, pursuant to the Rules, Chapter 851, Section 8B(5) and 40 CFR 264 Subpart D;
  - (14) Maintain, and update, aid agreements from the local police, fire departments, emergency response teams and hospital. Update these annually and keep them on file, pursuant to the Rules, Chapter 851, Section 13C(7)(ii) and 40 CFR 264. 37; and
  - (15) Maintain a written inspection schedule for ground-water monitoring equipment for landfill #5 pursuant to 40 CFR 265.15(b)(1);
- B. Ensure that laboratory wastes, any mercury-containing wastes and other unlicensed wastes are not discharged to septic systems at the facility and that all hazardous wastes are managed and disposed of in accordance with the Rules;
- C. On or before December 15, 1997, submit to the Department a plan and implementation schedule for the Department's review and approval to complete

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the investigation of the extent of contamination in all existing septic tanks, pipes and distribution box systems whether or not those systems are currently in use as identified in the report dated October 17, 1997 entitled "Summary Report Septic Tanks and Leach Fields." HMC shall, within seven (7) calendar days from the Board's approval of this Agreement, identify by a letter to the Department and EPA, leach fields #1, #2 and #8 as "Areas of Concern" within the RCRA corrective action site investigation conducted pursuant to the civil action described in Paragraph 4 above. HMC shall in conjunction with the other Responsible Parties investigate these leach fields to the Department's satisfaction. The results shall be recorded in the final Site Investigation Report, and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;

- D. On or before December 22, 1997, hire an independent, registered engineer who is a certified American Petroleum Institute (API) Standard 653 Inspector to conduct an on-site evaluation of the risk(s) posed by tanks and piping whether in-ground or above ground, at the facility. The engineer shall evaluate the existing inspection and preventative maintenance program and make written recommendations to HoltraChem and the Department on the method and frequency of inspection and/or testing required to determine the integrity and safety of all tanks and piping systems that stores or transports chemicals, process wastes and waste waters. The recommendations shall include a system for tracking the inspection and testing schedule necessary to conform with recommended sound engineering practices. The engineer shall provide HoltraChem and the Department with a written report which describes the findings and recommendations before February 13, 1998. As part of the report, the engineer shall give special consideration to identifying and prioritizing the areas or situations which may pose a risk of leakage or failure and recommend any appropriate testing methods and corrective measures as necessary to minimize those risks. HoltraChem shall provide the Department with a plan and schedule to address the engineer's recommendations before March 13, 1998;
- E. On or before November 28, 1997, HMC must complete installation of a fence between the Southerly Stream and the Ferry Road residences as approved by the Department. Signs with appropriate warning language must be posted on the fence;
- F. Submit the monitoring results within thirty (30) days of receipt of the laboratory report to the Department c/o Stacy Ladner for the quarterly drinking water well monitoring of the Ferry Road residences. The monitoring must be maintained for a minimum of one year at which time the Department will review the results with

HMC before determining whether or not the monitoring must continue and at what interval;

- G. Immediately begin weekly monitoring for pH and filtered and unfiltered mercury in surface waters in the Southerly Stream and discharge point 003. All test methods and record keeping shall be maintained in the same manner as those contained in the terms and conditions of HMC's Waste Discharge License. Beginning on March 31, 1998, the flow in the Southerly Stream and outfall 003 shall be measured at the time the samples are collected. Monitoring results shall be submitted with Discharge Monitoring Reports required by HMC's Waste Discharge License. Copies of the monitoring results and Discharge Monitoring Reports shall also be submitted to the Department c/o Stacy Ladner. This monitoring shall continue unless and until suspended or modified by the Department. This monitoring shall be conducted as part of the comprehensive monitoring plan referenced in Paragraph J below;
- H. Maintain continuous monitoring of the pH of each batch of treated waste water discharged from discharge point 002. Prior to the release of waste water from discharge point 002 to the plant's sewer system for ultimate discharge through discharge point 001, the pH of each batch shall be within the range of 6.0 to 9.0 SU. All testing shall be conducted using methods approved pursuant to HMC's Waste Discharge License and results shall be reported to the Department as required on Discharge Monitoring Reports for discharge point 002. This monitoring shall continue unless and until suspended or modified by the Department, or superseded by a subsequent Waste Discharge License condition;
- I. Maintain continuous monitoring of pH at discharge point 001 using methods approved pursuant to HMC's Waste Discharge License. The results shall be reported to the Department as required on Discharge Monitoring Reports for discharge point 001, showing the instantaneous minimum and maximum values recorded. This monitoring shall continue unless and until suspended or modified by the Department, or superseded by a subsequent Waste Discharge License condition;
- J. On or before January 9, 1998, submit to the Department for review and approval a comprehensive monitoring plan to evaluate the concentration of mercury in groundwaters and surface waters on the site and in the Penobscot River adjacent to the site. The plan shall include sampling of the groundwater monitoring wells. The plan shall also include the location, type and frequency of sampling performed on waste water discharges and air emissions. The plan must identify the methods and frequency proposed for all sampling and analytical work to be performed. The plan must provide for reporting all results to the Department on a

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quarterly basis and the total quantity of mercury entering the Penobscot River on a quarterly basis, and include a summary of all results from previous quarters;

- K. Implement interim corrective actions for groundwater contamination in the vicinity of the North bank of the Southerly Stream in accordance with plans and schedules approved by the Department. The corrective actions shall be designed to prevent the discharge of pollutants to the Southerly Stream. Appropriate treatment and disposal of wastes must be reviewed and approved by the Department. HMC shall in conjunction with the other Responsible Parties address the long term treatment of contamination reaching the Southerly Stream to the Department's satisfaction in the corrective action site investigation, final Site Investigation Report, and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- L. Within thirty (30) days of receipt of the Department's review and approval, implement as modified and approved, the interim plan dated November 14, 1997 to prevent sediment from the Southerly Stream and storm water outfall 003 from entering the Penobscot River, including procedures to manage and maintain the structures and/or controls, and provisions for the removal, analysis and disposal of any trapped sediment. HMC shall, in conjunction with the other Responsible Parties, address to the Department's satisfaction the long term remediation of contaminated sediments in the Southerly Stream and 003 drainage ways in the corrective action site investigation, final Site Investigation Report, and potential remediation shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- M. On or before June 1, 1998, complete repairs and installation of a leak detection system to the North Filter Backwash Receiver Tank System in accordance with the Department's approval and return it to service. HMC must notify the Department that the repairs and installation of leak detection system is complete and the date the tank system will be returned to service. After removing the South Filter Backwash Receiver Tank System from service, HMC must inspect the tank and submit the results of the inspection and a plan for any future use of that tank to the Department for its review and approval;
- N. Prior to placing the clarifier tank back in service, install a high level alarm;

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- O. On or before March 31, 1998, submit to the Department a waste water certification as required by the Rules, Chapter 856, Section 6D for the wastewater treatment units;
- P. On or before December 19, 1997, complete the implementation of the work plans for the investigation and removal of soils contaminated by mercury resulting from the discharge of hazardous wastes from the cell room sump referenced in Paragraph 22 above and the hydrogen condensate sump referenced in Paragraph 23 above, as approved by the Department;
- Q. On or before January 23, 1998, submit for the Department's review and approval HMC's complete response to the Department's comments of November 14, 1997 on the Corrective Action Supplemental Site Work Plan. Along with HMC's response to the Department's comments, HMC shall submit an Implementation Plan and Schedule for addressing the Department's comments of November 14, 1997 and the agreed upon action items set forth in HMC's September 19 and October 17, 1997 responses to the Department's letter of August 21, 1997. This response shall be submitted to the Department c/o Stacy Ladner. The plan shall be implemented in conjunction with the other Responsible Parties to the Department's satisfaction, and results of the plan shall be included in the final Site Investigation Report and potential remediations shall be addressed in the Corrective Measures Study pursuant to the civil action described in Paragraph 4 above. Remedial measures shall be implemented pursuant to the Department's corrective action authorities;
- R. On or before January 9, 1998, submit a plan for ambient air monitoring for mercury for the Department's review and approval. The plan must include a minimum of three tekran air monitoring devices, a meteorological data collection system and include a schedule and proposed locations for installation of the equipment. HoltraChem shall submit the air monitoring data to the Department quarterly.

In Witness THEREOF, the parties hereto have executed this Agreement consisting of twenty-nine (29) pages.

HoltraChem Manufacturing Co., LLC

BY: \_\_\_\_\_  
Bruce D. Davis, President

DATE: \_\_\_\_\_

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BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Osmond C. Bonsey, Chairman

DATE: \_\_\_\_\_

SEEN AND AGREED TO:  
STATE OF MAINE

BY: \_\_\_\_\_  
Dennis J. Harnish, Assistant Attorney General

DATE: \_\_\_\_\_

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